

95TH CONGRESS
1ST SESSION

H. R. 3



CMS Library
01-07-12
2200 Security Blvd.
Baltimore, MD 21244

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. ROSTENKOWSKI (for himself and Mr. ROGERS) introduced the following bill; which was referred jointly to the Committees on Ways and Means and Interstate and Foreign Commerce

A BILL

To strengthen the capability of the Government to detect, prosecute, and punish fraudulent activities under the medicare and medicaid programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Medicare-Medicaid Anti-
4 Fraud and Abuse Amendments".

5 PROHIBITION AGAINST ASSIGNMENT BY PHYSICIANS AND
6 OTHERS OF CLAIMS FOR SERVICES

7 SEC. 2. (a) Section 1842 (b) (5) of the Social Security
8 Act is amended by adding at the end thereof the following
9 new sentence: "No payment which under the preceding
10 sentence may be made directly to the physician or other

1 person providing the service involved (pursuant to an assign-
2 ment described in subparagraph (B) (ii) of paragraph (3))
3 shall be made to anyone else under a reassignment or power
4 of attorney (except to an employer or facility as described
5 in clause (A) or (B) of such sentence) ; but nothing in
6 this subsection shall be construed (i) to prevent the making
7 of such a payment in accordance with an assignment from
8 the individual to whom the service was provided or a reas-
9 signment from the physician or other person providing such
10 service if such assignment or reassignment is made to a gov-
11 ernmental agency or entity or is established by or pursuant
12 to the order of a court of competent jurisdiction, or (ii) to
13 preclude an agent of the physician or other person provid-
14 ing the service from receiving any such payment if (but
15 only if) such agent does so pursuant to an agency agree-
16 ment under which the compensation to be paid to the agent
17 for his services for or in connection with the billing or
18 collection of payments due such physician or other person
19 under this title is unrelated (directly or indirectly) to the
20 amount of such payments or the billings therefor, and is not
21 dependent upon the actual collection of any such payment.”.

22 (b) Section 1815 of such Act is amended by adding
23 at the end thereof the following new subsection:

24 “(c) No payment which may be made to a provider
25 of services under this title for any service furnished to an

1 individual shall be made to any other person under an
2 assignment or power of attorney; but nothing in this sub-
3 section shall be construed (1) to prevent the making of
4 such a payment in accordance with an assignment from
5 the provider if such assignment is made to a governmental
6 agency or entity or is established by or pursuant to the order
7 of a court of competent jurisdiction, or (2) to preclude an
8 agent of the provider of services from receiving any such
9 payment if (but only if) such agent does so pursuant to an
10 agency agreement under which the compensation to be paid
11 to the agent for his services for or in connection with the
12 billing or collection of payments due such provider under
13 this title is unrelated (directly or indirectly) to the amount
14 of such payments or the billings therefor, and is not depend-
15 ent upon the actual collection of any such payment.”.

16 (c) Section 1902 (a) (32) of such Act is amended to
17 read as follows:

18 “(32) provide that no payment under the plan for
19 any care or service provided to an individual shall be
20 made to anyone other than such individual or the person
21 or institution providing such care or service, under an
22 assignment or power of attorney or otherwise; except
23 that—

24 “(A) in the case of any care or service pro-
25 vided by a physician, dentist, or other individual

1 practitioner, such payment may be made (i) to the
2 employer of such physician, dentist, or other prac-
3 titioner if such physician, dentist, or practitioner is
4 required as a condition of his employment to turn
5 over his fee for such care or service to his employer,
6 or (ii) (where the care or service was provided in a
7 hospital, clinic, or other facility) to the facility in
8 which the care or service was provided if there is a
9 contractual arrangement between such physician,
10 dentist, or practitioner and such facility under which
11 such facility submits the bill for such care or service;
12 and

13 “(B) nothing in this paragraph shall be con-
14 strued (i) to prevent the making of such a payment
15 in accordance with an assignment from the person
16 or institution providing the care or service involved
17 if such assignment is made to a governmental
18 agency or entity or is established by or pursuant
19 to the order of a court of competent jurisdiction,
20 or (ii) to preclude an agent of such person or
21 institution from receiving any such payment if
22 (but only if) such agent does so pursuant to an
23 agency agreement under which the compensation to
24 be paid to the agent for his services for or in con-
25 nection with the billing or collection of payments

(d) The amendments made by this section shall apply with respect to care and services furnished on or after the date of the enactment of this Act.

10 SEC. 3. (a) Part A of title XI of the Social Security
11 Act is amended by inserting immediately after section 1123
12 the following new section:

13 “DISCLOSURE OF OWNERSHIP AND FINANCIAL
14 INFORMATION

15 “SEC. 1124. (a) (1) The Secretary shall by regulation
16 (or by contract provision) provide that any entity (other
17 than a public agency) which is—

18 “(A) a provider or supplier (as those terms are
19 defined in subsection (c)) that furnishes, or arranges
20 for the furnishing of, items or services with respect to
21 which payment is claimed under title XVIII, under
22 any program established pursuant to title V, or under a
23 State plan approved under title XIX, or

24 “(B) (i) a party to an agreement with the Secre-
25 tary entered into pursuant to section 1816 or 1842 (a),

1 or (ii) a party to an agreement, with a State agency
2 administering or supervising the administration of a
3 State plan approved under title XIX, under which such
4 party serves as a fiscal agent for the State in the operation of such plan,

5 shall promptly comply with any request, specifically addressed to that entity by the Secretary or the Comptroller General of the United States, for any or all of the following:

6 “(C) full and complete information as to the identity (i) of every person who has (directly or indirectly)
7 an ownership interest or lease or rental interest of 5 per centum or more in such entity and the nature and extent thereof, or who is the owner (in whole or in part) of an
8 interest of 5 per centum or more in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such entity or any of the property or assets thereof, (ii) in case such entity is organized as a corporation, of each officer and director of the corporation, and
9 (iii) in case such entity is organized as a partnership, of each partner;

10 “(D) full and complete information (except in the case of a supplier not affiliated through direct or indirect common ownership or control, in whole or in part, with a provider) as to any significant business transactions between such entity (and, in the case of a

1 shared health facility, between any supplier affiliated
2 therewith) and persons referred to in subparagraph
3 (C) ;

4 “(E) a report containing such information with
5 respect to the entity’s costs and charges involving items
6 and services described in subparagraph (A) (or its
7 functions described in subparagraph (B)) as the Sec-
8 retary may specify (except in the case of a supplier not
9 affiliated through direct or indirect common ownership
10 or control, in whole or in part, with a provider) , includ-
11 ing costs and charges of related organizations (as that
12 term is employed for purposes of title XVIII) ; and

13 “(F) in the case of an entity described in subpara-
14 graph (A) which is an independent pharmacy, inde-
15 pendent laboratory, independent supplier of durable
16 medical equipment, or renal disease facility, reasonable
17 access to the books and records of such entity which
18 pertain to the provision of or billing and payment for
19 goods and services supplied or rendered by such entity
20 in connection with the programs established under titles
21 V, XVIII, and XIX.

22 “(2) Notwithstanding the preceding provisions of this
23 subsection, no request under paragraph (1) shall apply to
24 transactions occurring, costs incurred, or charges imposed
25 more than three years prior to the date on which the request

1 is made; and no request under paragraph (1) shall be made
2 of an entity described in subparagraph (A) thereof if such
3 entity does not furnish a significant volume (as defined in
4 regulations prescribed by the Secretary) of items and serv-
5 ices referred to in such subparagraph.

6 “(b) (1) If at the close of the sixty-day period begin-
7 ning on the date a request under subsection (a) (1) is made
8 of an entity described in subparagraph (A) or (B) thereof
9 such request has not been complied with, then—

10 “(A) in case such entity is an entity described in
11 subsection (a) (1) (A), the Secretary may notify such
12 entity that no payment will be made to such entity
13 under title XVIII, and no Federal funds will be avail-
14 able with respect to any expenditures made under or
15 pursuant to title V or XIX (or a program or plan ap-
16 proved thereunder) for or on account of any services
17 furnished by such entity, on or after the first day of the
18 first calendar month which begins not less than thirty
19 days after the date such notice is sent,

20 “(B) in case such entity is an entity described in
21 subsection (a) (1) (B) (i), the Secretary may notify
22 such entity that any agreement between such entity and
23 the Secretary entered into pursuant to section 1816 or
24 section 1842 is terminated effective on the first day of

1 the first calendar month which begins not less than
2 thirty days after the date such notice is sent, and

3 “(C) in case such entity is an entity described in
4 subsection (a) (1) (B) (ii), the Secretary may notify
5 the State having an agreement with such entity that
6 no Federal funds will be available with respect to any
7 expenses incurred to compensate such entity for or on
8 account of services performed by it pursuant to such
9 agreement (or any similar agreement) on or after the
10 first day of the first calendar month which begins not
11 less than thirty days after the date such notice is sent.

12 In case the Comptroller General of the United States makes
13 a request under subsection (a) (1) which is not complied
14 with prior to the close of the sixty-day period described in
15 the preceding sentence, then he shall, at the earliest practi-
16 cable date after the close of such period, advise the Secre-
17 tary of the fact that such request was made by him and
18 was not complied with within such period, so that the
19 Secretary may notify the entity involved as provided in
20 subparagraph (A), (B), or (C).

21 “(2) Notwithstanding any other provision of law—

22 “(A) payments otherwise authorized to be made
23 under title XVIII, and Federal funds otherwise avail-
24 able with respect to expenditures under or pursuant to

1 title V or XIX (or a program or plan approved there-
2 under), shall be subject to the limitations referred to in
3 notices sent by the Secretary pursuant to paragraph
4 (1) (A), and the entities involved shall not be qualified
5 (on or after the effective date of such limitations) as
6 providers or suppliers for purposes of the provisions or
7 programs involved,

8 “(B) agreements referred to in paragraph (1) (B)
9 shall be terminated as indicated by the Secretary in
10 notices sent by him pursuant to such paragraph, and

11 “(C) Federal funds otherwise available with re-
12 spect to expenditures under a State plan approved under
13 title XIX shall be subject to the limitations referred
14 to in notices sent by the Secretary pursuant to para-
15 graph (1) (C) ;

16 except that the Secretary, for good cause shown, may ter-
17 minate the application of any such limitation.

18 “(3) Determinations and notifications by the Secretary
19 under the preceding provisions of this subsection shall be
20 made subject to the requirements and procedures for hearing
21 and judicial review which are generally applicable for pur-
22 poses of the provisions or programs involved; except that
23 in no case shall payments be made or Federal funds continue
24 available under or for purposes of such provisions or pro-
25 grams in a case to which paragraph (1) (A) applies, pend-

1 ing any such hearing or review, for a period of more than
2 ninety days after the date on which the notice described
3 in such paragraph is sent.

4 “(c) For purposes of this section—

5 “(1) the term ‘provider’ means a provider of
6 services as defined in section 1861 (u) ; and

7 “(2) the term ‘supplier’ means an individual, orga-
8 nization, or entity (other than an individual practitioner
9 or a provider as defined in paragraph (1)) engaged in
10 furnishing (or in arranging for the furnishing of) any
11 kind of items or services with respect to which pay-
12 ment may be made under title XVIII, under a pro-
13 gram established pursuant to title V, or under a State
14 plan approved under title XIX (including a shared
15 health facility as defined in section 1125 and any prac-
16 titioner or supplier affiliated with such a facility, and
17 including a health maintenance organization as defined
18 in section 1301 of the Public Health Service Act).

19 In any case where an entity is (without regard to this sen-
20 tence) a ‘provider’ or ‘supplier’ within the meaning of the
21 applicable term as defined in paragraph (1) or (2), such
22 term also includes any subcontractor or other person
23 (whether or not otherwise a provider or supplier as so de-
24 fined) with which such entity engages in business transac-
25 tions if such subcontractor or other person is affiliated through

1 direct or indirect common ownership or control, in whole or
2 in part, with such entity.”.

3 (b) Part A of title XI of such Act is amended by
4 inserting after section 1124 (as added by subsection (a)
5 of this section) the following new section:

6 “SHARED HEALTH FACILITY

7 “SEC. 1125. For purposes of this Act, the term ‘shared
8 health facility’ means any arrangement whereby—

9 “(1) two or more health care practitioners (one
10 or more of whom receives payment on a fee-for-service
11 basis under title V, XVIII, or XIX of this Act) prac-
12 tice their professions at a common physical location;

13 “(2) such practitioners share (A) common wait-
14 ing areas, examining rooms, treatment rooms, or other
15 space, (B) the services of supporting staff, or (C)
16 equipment, and

17 “(3) (A) such practitioners have a person who is
18 in charge of, controls, manages, or supervises substantial
19 aspects of the arrangement or operation for the delivery
20 of health or medical services at such common physical
21 location, other than the direct furnishing of profes-
22 sional health care services by the practitioners to their
23 patients, or a person who makes available to such prac-
24 titioners the services of supporting staff who are not
25 employees of such practitioners, and either such person

1 is compensated in whole or in part, for the use of such
2 physical location or support services pertaining thereto,
3 on a basis related to amounts charged or collected for the
4 services rendered or ordered at such location, or

5 “(B) at least one of such practitioners received pay-
6 ments on a fee-for-service basis under titles V, XVIII,
7 and XIX of this Act in excess of \$5,000 for any one
8 month during the preceding 12 months, or in an aggre-
9 gate amount exceeding \$40,000 during the preceding 12
10 months;

11 except that such term does not include a provider of services
12 (as defined in section 1861 (u) of this Act), a health mainte-
13 nance organization (as defined in section 1301 of the Public
14 Health Service Act), a hospital cooperative shared services
15 organization meeting the requirements of section 501 (e) of
16 the Internal Revenue Code of 1954, or any public entity.”.

17 PENALTIES FOR DEFRAUDING MEDICARE AND MEDICAID

18 PROGRAMS

19 SEC. 4. (a) Section 1877 of the Social Security Act is
20 amended—

21 (1) in subsection (a) thereof, by striking out
22 “shall be guilty” and all that follows and inserting in
23 lieu thereof the following: “shall (i) in the case of such
24 a statement, representation, concealment, failure, or
25 conversion by any person in connection with the fur-

1 nishing (by that person) of items or services for which
2 payment is or may be made under this title, be guilty
3 of a felony and upon conviction thereof fined not more
4 than \$25,000 or imprisoned for not more than five years
5 or both, or (ii) in the case of such a statement, repre-
6 sentation, concealment, failure, or conversion by any
7 other person, be guilty of a misdemeanor and upon con-
8 viction thereof fined not more than \$10,000 or im-
9 prisoned for not more than one year or both.”;

10 (2) in subsection (b) thereof—

11 (A) by inserting “or arranges for the furnish-
12 ing of” immediately after “Whoever furnishes”;

13 (B) by inserting “(in cash or in kind)” im-
14 mediately after “kickback or bribe”;

15 (C) by inserting “or arrangement for the fur-
16 nishing” immediately after “in connection with the
17 furnishing”;

18 (D) by striking out “rebate of any fee or
19 charge” and inserting in lieu thereof “rebate of any
20 fee, charge, or portion of any payment, in cash or
21 in kind,”;

22 (E) by inserting “or arrangement for the fur-
23 nishing” immediately after “another person for the
24 furnishing”;

1 (F) by striking out “misdemeanor” and insert-
2 ing in lieu thereof “felony”;

3 (G) by striking out “\$10,000” and inserting in
4 lieu thereof “\$25,000”; and

5 (H) by striking out “one year” and inserting
6 in lieu thereof “five years”; and

7 (3) in subsection (c) thereof—

8 (A) by striking out “misdemeanor” and in-
9 serting in lieu thereof “felony”;

10 (B) by striking out “\$2,000” and inserting in
11 lieu thereof “\$25,000”; and

12 (C) by striking out “6 months” and inserting
13 in lieu thereof “five years”.

14 (b) Section 1909 of such Act is amended—

15 (1) in subsection (a) thereof, by striking out
16 “shall be guilty” and all that follows and inserting in
17 lieu thereof the following: “shall (i) in the case of such
18 a statement, representation, concealment, failure, or
19 conversion by any person in connection with the furnish-
20 ing (by that person) of items or services for which
21 payment is or may be made under this title, be guilty of
22 a felony and upon conviction thereof fined not more
23 than \$25,000 or imprisoned for not more than five years
24 or both, or (ii) in the case of such a statement, repre-

1 sentation, concealment, failure, or conversion by any
2 other person, be guilty of a misdemeanor and upon con-
3 viction thereof fined not more than \$10,000 or im-
4 prisoned for not more than one year or both. In addition,
5 in any case where an individual who is otherwise eligible
6 for assistance under a State plan approved under this
7 title is convicted of an offense under the preceding pro-
8 visions of this subsection, the State may at its option
9 (notwithstanding any other provision of this title or of
10 such plan) limit, restrict, or suspend the eligibility of
11 that individual for such period (not exceeding one year)
12 as it deems appropriate; but the imposition of a limita-
13 tion, restriction, or suspension with respect to the eligi-
14 bility of any individual under this sentence shall not
15 affect the eligibility of any other person for assistance
16 under the plan, regardless of the relationship between
17 that individual and such other person.”;

18 (2) in subsection (b) thereof—

19 (A) by inserting “or arranges for the furnish-
20 ing of” immediately after “Whoever furnishes”;

21 (B) by inserting “(in cash or in kind)” imme-
22 diately after “kickback or bribe”;

23 (C) by inserting “or arrangement for the fur-

1 nishing” immediately after “in connection with the
2 furnishing”;

3 (D) by striking out “rebate of any fee or
4 charge” and inserting in lieu thereof “rebate of any
5 fee, charge, or portion of any payment, in cash or
6 in kind,”;

7 (E) by inserting “or arrangement for the fur-
8 nishing” immediately after “another person for the
9 furnishing”;

10 (F) by striking out “misdemeanor” and insert-
11 ing in lieu thereof “felony”; and

12 (G) by striking out “\$10,000” and inserting
13 in lieu thereof “\$25,000”; and

14 (H) by striking out “one year” and inserting
15 in lieu thereof “five years”; and

16 (3) in subsection (e) thereof—

17 (A) by striking out “misdemeanor” and in-
18 serting in lieu thereof “felony”,

19 (B) by striking out “\$2,000” and inserting in
20 lieu thereof “\$25,000”, and

21 (C) by striking out “6 months” and inserting
22 in lieu thereof “five years”.

23 (c) The amendments made by this section shall apply

1 only to offenses committed after the date of the enactment
2 of this Act.

3 AMENDMENTS RELATED TO PROFESSIONAL STANDARDS

4 REVIEW ORGANIZATIONS

5 SEC. 5. (a) Section 1152 (e) of the Social Security Act
6 is amended to read as follows:

7 “(e) Where the Secretary finds a Professional Stand-
8 ards Review Organization (whether designated on a condi-
9 tional basis or otherwise) to be competent to perform review
10 responsibilities, the review, certification, and similar activi-
11 ties otherwise required pursuant to provisions of this Act
12 (other than this part) shall not be applicable with respect
13 to those providers, suppliers, and practitioners being re-
14 viewed by such Professional Standards Review Organization,
15 except to the extent specified by the Secretary. Nothing in
16 the preceding sentence shall be construed as rendering in-
17 applicable any provision of this Act wherein requirements
18 with respect to conditions for eligibility to or payment of
19 benefits (as distinct from reviews and certifications made
20 with respect to determinations of the kind made pursuant
21 to paragraphs (1) and (2) of section 1155 (a)) must be
22 satisfied.”.

23 (b) (1) Section 1154 (b) of such Act is amended to
24 read as follows:

25 “(b) During any such trial period (which may not

1 exceed twenty-four months except as provided in subsection
2 (c)), the Secretary may require a Professional Standards
3 Review Organization to perform, in addition to review of
4 health care services provided by or in hospitals, only such
5 of the duties and functions required under this part as he
6 determines such organization to be capable of performing.
7 The number and type of such duties shall, during the trial
8 period, be progressively increased as the organization be-
9 comes capable of added responsibility so that, by the end
10 of such period, such organization shall be considered a quali-
11 fied organization if the Secretary finds—

12 “(1) that it is substantially carrying out in a satis-
13 factory manner reviews of services provided by or in
14 hospitals (including ancillary services), and such other
15 duties, functions, and reviews which the Secretary has
16 found such organization capable of performing and re-
17 quired it to perform; and

18 “(2) that it has developed a plan acceptable to
19 the Secretary for progressively assuming over a reason-
20 able period of time such remaining functions as are re-
21 quired under section 1155 (a) .

22 Any of such duties and functions not performed by such
23 organization shall be performed in the manner and to the
24 extent otherwise provided for under law.”.

25 (2) Section 1154 of such Act is further amended by

1 redesignating subsection (c) as subsection (d), and by in-
2 serting after subsection (b) the following new subsection:

3 “(c) If the Secretary finds that an organization desig-
4 nated under subsection (a) has been unable to perform
5 satisfactorily all of the duties and functions required under
6 this part, he may extend such organization’s trial period for
7 an additional period not exceeding twenty-four months.”.

8 (c) Section 1155 (b) (3) of such Act is amended by
9 inserting “and abstract” immediately after “examine”.

10 (d) Section 1155 of such Act is amended—

11 (1) by striking out “directly or indirectly involved
12 in” in subsection (a) (6) (A) and inserting in lieu
13 thereof “directly responsible for”;

14 (2) by striking out “any financial” in subsection
15 (a) (6) (B) and inserting in lieu thereof “a significant
16 financial”;

17 (3) by inserting after “to such organization” in
18 subsection (f) (2) the following: “, in a manner similar
19 to that provided for under section 1816 (c),”; and

20 (4) by striking out subsection (g) and inserting
21 in lieu thereof the following new subsection:

22 “(g) The Secretary, where a Professional Standards
23 Review Organization (whether designated on a conditional
24 basis or otherwise) requests review responsibility with re-
25 spect to services furnished in shared health facilities (as de-

1 fined in section 1125), must give priority to such request,
2 with the highest priority being assigned to areas with sub-
3 stantial numbers of shared health facilities.”.

4 (e) Section 1158 of such Act is amended by adding
5 at the end thereof the following new subsection:

6 “(c) Where a Professional Standards Review Organi-
7 zation (whether designated on a conditional basis or other-
8 wise) has been found competent by the Secretary to assume
9 review responsibility with respect to specified types of health
10 care services or specified providers or practitioners of such
11 services and is performing such reviews, determinations made
12 pursuant to paragraphs (1) and (2) of section 1155(a) in
13 connection with such reviews shall constitute the conclusive
14 determination on those issues (subject to section 1159) for
15 purposes of payment under this Act, and no reviews with
16 respect to those determinations shall be conducted, for pur-
17 poses of payment, by agencies and organizations which are
18 parties to agreements entered into by the Secretary pursuant
19 to section 1816, carriers which are parties to contracts en-
20 tered into by the Secretary pursuant to section 1842, or State
21 agencies administering or supervising the administration of
22 State plans approved under title XIX.”.

23 (f) Section 1160(b)(1) of such Act is amended by
24 striking out “practitioner or provider” each time it appears
25 therein and inserting in lieu thereof “health care practitioners

1 or any hospital, or other health care facility, agency, or
2 organization”.

3 (g) Section 1163 (f) of such Act is amended by striking
4 out the last sentence and inserting in lieu thereof the follow-
5 ing: “Such report shall also include such data, in addition to
6 the data to be included in the report required by section 1171,
7 as the Council may find appropriate.”.

8 (h) Section 1165 of such Act is amended—

9 (1) by inserting “(a)” immediately after “SEC.
10 1165.”; and

11 (2) by adding at the end thereof the following new
12 subsection:

13 “(b) The Secretary shall by regulation provide for the
14 implementation of such data collection systems as will assure
15 the systematic gathering of comparable data on an accurate,
16 economical, and timely basis for the purposes of (1) evalu-
17 ating a Professional Standards Review Organization’s impact
18 on the quality and utilization of health care services in its
19 area, (2) comparing such impact with the corresponding
20 impact in other areas, and (3) evaluating the administration
21 of the program.”.

22 (i) Section 1166 of such Act is amended—

23 (1) by striking out “or (2)” in subsection (a)
24 and inserting in lieu thereof “, (2)”;

25 (2) by inserting the following immediately before

1 the period at the end of subsection (a) : “, or (3) in
2 accordance with subsection (b) ”;

3 (3) by redesignating subsection (b) as subsection
4 (c) ; and

5 (4) by inserting the following new subsection im-
6 mediately after subsection (a) :

7 “(b) A professional Standards Review Organization
8 shall provide, in accordance with procedures established by
9 the Secretary, data and information—

10 “(1) to assist Federal and State agencies recog-
11 nized by the Secretary as having responsibility for iden-
12 tifying and investigating cases or patterns of fraud or
13 abuse, which data and information shall be provided by
14 such Organization to such agencies at the request of such
15 agencies or at the discretion of such Organization on
16 the basis of its findings with respect to suspected cases
17 or patterns of fraud or abuse ;

18 (2) to assist the Secretary, and such Federal
19 and State agencies recognized by the Secretary as hav-
20 ing health planning or related responsibilities under
21 Federal or State law (including health systems agencies
22 and State health planning and development agencies),
23 in carrying out appropriate health care planning and
24 related activities, which data and information shall be
25 provided in such format and manner as may be pre-

1 scribed by the Secretary or agreed upon by the respon-
2 sible Federal and State agencies and such Organization,
3 and shall be in the form of aggregate statistical data
4 (without identifying any individual) on a geographic,
5 institutional, or other basis reflecting the volume and
6 frequency of services furnished, as well as the demo-
7 graphic characteristics of the population subject to re-
8 view by such Organization.

9 The penalty provided in subsection (c) shall not apply to
10 the disclosure of any data and information received under this
11 subsection, except that such penalty shall apply to the dis-
12 closure (by the agency receiving such data and information)
13 of any such data and information described in paragraph (1)
14 unless such disclosure is made in a judicial, administrative,
15 or other formal legal proceeding resulting from an investiga-
16 tion conducted by the agency receiving the data and infor-
17 mation”.

18 (j) Section 1167 of such Act is amended by adding the
19 following new subsection at the end thereof:

20 “(d) The Secretary shall make payment to a Profes-
21 sional Standards Review Organization, whether conditionally
22 designated or qualified, or to any member of employee
23 thereof, or to any person who furnishes professional counsel
24 or services to such organization, in an amount equal to the

1 reasonable amount of the expenses incurred, as determined by
2 the Secretary, in connection with the defense of any suit,
3 action, or proceeding brought against such organization,
4 member, employee, or person related to the performance of
5 any duty or function of such organization, member, em-
6 ployee, or person (as described in section 1155).”.

7 (k) Section 1168 of such Act is amended by adding at
8 the end thereof the following new sentence: “The Secretary
9 shall make payments to Professional Standards Review Orga-
10 nizations (whether designated on a conditional basis or other-
11 wise) from funds described in clause (c) of the first sentence
12 of this section (without any requirement for the contribution
13 of funds by any State or political subdivision thereof) for
14 expenses incurred in the performance of duties by such
15 Organizations.”.

16 (l) Part B of title XI of such Act is amended by adding
17 at the end thereof the following new section:

18 “ANNUAL REPORTS

19 “SEC. 1171. The Secretary shall submit to the Congress
20 on April 1, 1978, and on April 1 of each year thereafter, a
21 full and complete report on the administration, impact, and
22 cost of the program under this part during the preceding fiscal
23 year, including but not limited to data and information on—

24 “(1) the number, status (conditional or otherwise),

1 and service areas of and review methodologies employed
2 by all Professional Standards Review Organizations par-
3 ticipating in the program;

4 “(2) the number of health care institutions and
5 practitioners whose services are subject to review by
6 Professional Standards Review Organizations, and the
7 number of beneficiaries and recipients who received
8 services subject to such review during such year;

9 “(3) services determined, in accordance with the
10 provisions of this title, to have been (A) medically
11 unnecessary, (B) furnished in an inappropriate setting,
12 or (C) deficient in quality;

13 “(4) the imposition of penalties and sanctions under
14 this title for violations of law and for failure to comply
15 with the obligations imposed by this part;

16 “(5) the total costs incurred under titles V, XI,
17 XVIII, and XIX of this Act in the implementation and
18 operation of all procedures required by such titles for
19 the review of services to determine their medical neces-
20 sity, appropriateness of use, and quality;

21 “(6) changes in utilization rates and patterns, and
22 changes in medical procedures and practices, attributa-
23 ble to the activities of Professional Standards Review
24 Organizations;

1 “(7) the results of program evaluation activities,
2 including the operation of data collection systems;

3 “(8) the extent to which Professional Standards
4 Review Organizations are performing reviews of serv-
5 ices for other private or governmental health insurance
6 programs; and

7 “(9) recommendations for legislative changes.”.

8 (m) Section 1861 (w) (2) of such Act is amended by
9 inserting “part B of this title or under” immediately after
10 “entitled to have payment made for such services under”.

11 (n) (1) Section 1152 (b) (1) (A) (vi) of such Act is
12 amended by striking out “subsection (c) (i)” and inserting
13 in lieu thereof “subsection (c) (1)”.

14 (2) Section 1155 (a) (1) of such Act is amended by
15 striking out “(subject to the provisions of subsection (g))”
16 in the matter preceding subparagraph (A).

17 (3) Section 1160 (b) (1) of such Act is amended by
18 inserting “or” after “permanently” in the matter following
19 clause (B).

20 ISSUANCE OF SUBPENAS BY COMPTROLLER GENERAL

21 SEC. 6. Part A of title XI of the Social Security Act
22 is amended by inserting after section 1125 (as added by
23 section 3 (b) of this Act) the following new section:

1 "ISSUANCE OF SUBPENAS BY COMPTROLLER GENERAL

2 "SEC. 1126. (a) For the purpose of any audit, investi-
3 gation, examination, analysis, review, evaluation, or other
4 function authorized by law with respect to any program
5 authorized under this Act, the Comptroller General of the
6 United States shall have power to sign and issue subpoenas
7 to any person requiring the production of any pertinent
8 books, records, documents, or other information. Subpoenas
9 so issued by the Comptroller General shall be served by
10 anyone authorized by him (1) by delivering a copy thereof
11 to the person named therein, or (2) by registered mail or
12 by certified mail addressed to such person at his last dwelling
13 place or principal place of business. A verified return by the
14 person so serving the subpoena setting forth the manner of
15 service, or, in the case of service by registered mail or by
16 certified mail, the return post office receipt therefor signed
17 by the person so served, shall be proof of service.

18 "(b) In case of contumacy by, or refusal to obey a
19 subpoena issued pursuant to subsection (a) of this section and
20 duly served upon, any person, any district court of the United
21 States for the judicial district in which such person charged
22 with contumacy or refusal to obey is found or resides or trans-
23 acts business, upon application by the Comptroller General,
24 shall have jurisdiction to issue an order requiring such person
25 to produce the books, records, documents, or other informa-

tion sought by the subpoena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the General Accounting Office or by counsel whom he may employ without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title relating to classification and General Schedule pay rates.”.

SUSPENSION OF PRACTITIONERS CONVICTED OF MEDICARE-

OR MEDICAID-RELATED CRIMES

SEC. 7. (a) Section 1862 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(e) Whenever the Secretary determines that a physician or other individual practitioner has been convicted (on or after the date of the enactment of this subsection, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to such physician’s or practitioner’s involvement in the program under this title or the program under title XIX, the Secretary shall suspend such physician or practitioner from participation in the program under this title for such period as he may deem appropriate; and no payment may be made

1 under this title with respect to any item or service fur-
2 nished by such physician or practitioner during the period
3 of such suspension. The provisions of paragraphs (2) and
4 (3) of subsection (d) shall apply with respect to determina-
5 tions made by the Secretary under this subsection.”.

6 (b) Section 1902 (a) of such Act is amended—

7 (1) by striking out “and” at the end of para-
8 graph (35) ;

9 (2) by striking out the period at the end of para-
10 graph (36) and inserting in lieu thereof “, and”; and

11 (3) by inserting after paragraph (36) the follow-
12 ing new paragraph:

13 “(37) provide that whenever the State agency
14 determines that a physician or other individual prac-
15 titioner has been convicted (on or after the date of the
16 enactment of this paragraph, or within the period prior
17 to that date which is specified by the Secretary under
18 section 1862 (e)) of a criminal offense related to such
19 physician’s or practitioner’s involvement in the program
20 under this title or the program under title XVIII, the
21 State agency shall suspend such physician or practitioner
22 from participation under the plan for such period as it
23 deems appropriate; and no payment may be made under
24 the plan with respect to any item or service furnished

1 by such physician or practitioner during the period of
2 such suspension.”.

3 (c) The amendments made by this section shall apply
4 with respect to determinations made on and after the date
5 of the enactment of this Act.

6 DISCLOSURE BY PROVIDERS OF OWNERS CONVICTED OF
7 CERTAIN OFFENSES

8 SEC. 8. (a) Part A of title XI of the Social Security
9 Act is amended by inserting after section 1126 (as added
10 by section 6 of this Act) the following new section:

11 “DISCLOSURE BY PROVIDERS, INSTITUTIONS, ORGANIZA-
12 TIONS, AND AGENCIES OF OWNERS WHO HAVE BEEN
13 CONVICTED OF CERTAIN OFFENSES

14 “SEC. 1127. As a condition of participation in or certifi-
15 cation or recertification under the programs established by
16 titles XVIII, XIX, and XX, any hospital, nursing facility,
17 or other provider, institution, organization, or agency shall
18 be required to disclose to the Secretary or to the appropriate
19 State agency the name of any person who—

20 “(1) has a direct or indirect ownership or control
21 interest of 5 percent or more in such provider, institution,
22 organization, or agency, and

23 “(2) has been convicted (on or after the date of
24 the enactment of this section, or within such period

1 prior to that date as the Secretary shall specify in
2 regulations) of a criminal offense related to the involve-
3 ment of such person in any of such programs.

4 The Secretary or the appropriate State agency shall promptly
5 notify the Inspector General in the Department of Health,
6 Education, and Welfare of the receipt from any provider,
7 institution, organization, or agency of any application or re-
8 quest for such participation, certification, or recertification
9 which discloses the name of any such person, and shall notify
10 the Inspector General of the action taken with respect to
11 such application or request.”.

12 (b) (1) Section 1866 (a) of such Act is amended by
13 adding at the end thereof the following new paragraph:

14 “(3) The Secretary may refuse to enter into an agree-
15 ment under this section with a provider of services if any
16 person having a direct or indirect ownership or control
17 interest of 5 percent or more in such provider is a person
18 described in section 1127.”.

19 (2) Section 1866 (b) (2) of such Act is amended by
20 inserting before the period at the end thereof the following:

21 “, or (G) that such provider (at the time the agreement
22 was entered into) did not fully and accurately make any
23 disclosure required of it by section 1127”.

24 (c) Section 1903 of such Act is amended by adding
25 at the end thereof the following new subsection:

1 “(m) The State agency may refuse to enter into any
2 contract or agreement with a hospital, nursing home, or other
3 provider, institution, organization, or agency for purposes of
4 participation under the State plan, or otherwise to approve
5 a provider, institution, organization, or agency for such
6 purposes, if any person having a direct or indirect
7 ownership or control interest of 5 percent or more in such
8 provider, institution, organization, or agency is a person
9 described in section 1127 (whether or not such provider,
10 institution, organization, or agency has in effect an agree-
11 ment entered into with the Secretary pursuant to section
12 1866 or is subject to a suspension of payment order issued
13 under subsection (j) of this section) ; and, notwithstanding
14 any other provision of this section, the State agency may
15 terminate any such contract, agreement, or approval if it
16 determines that the provider did not fully and accurately
17 make any disclosure required of it by section 1127 at the
18 time such contract or agreement was entered into or such
19 approval was given.”.

20 (d) Section 2002 (a) of such Act is amended by adding
21 at the end thereof the following new paragraph:

22 “(15) Any State may refuse to enter into a contract or
23 other arrangement with a provider of services for purposes
24 of participation under the program established by this title,
25 or otherwise to approve a provider for such purposes, if any

1 person having a direct or indirect ownership or control in-
2 terest of 5 percent or more in such provider is a person de-
3 scribed in section 1127, and may terminate any such con-
4 tract, arrangement, or approval if it determines that the
5 provider did not fully and accurately make any disclosure
6 required of it by section 1127 at the time the contract or
7 arrangement was entered into or the approval was given.”.

8 (e) The amendments made by this section shall apply
9 with respect to contracts, agreements, and arrangements en-
10 tered into and approvals given pursuant to applications or re-
11 quests made on and after the first day of the fourth month
12 beginning after the date of the enactment of this Act.

13 FEDERAL ACCESS TO RECORDS

14 SEC. 9. (a) Section 1902 (a) (27) (B) of the Social
15 Security Act is amended by inserting “or the Secretary”
16 after “State agency” each place it appears.

17 CLAIMS PROCESSING AND INFORMATION RETRIEVAL

18 SYSTEMS FOR MEDICAID PROGRAMS

19 SEC. 10. (a) Section 1903 (a) (3) (B) of the Social
20 Security Act is amended by inserting “, or to each individual
21 in a sample group of individuals who are furnished such
22 services,” immediately after “covered by the plan”.

23 (b) The amendment made by subsection (a) shall apply
24 with respect to calendar quarters beginning after the date
25 of the enactment of this Act.

MEDICAID AS PAYOR OF LAST RESORT

SEC. 11. (a) Section 1902 (a) of the Social Security Act (as amended by section 7 (b) of this Act) is amended—

(1) by striking out “and” at the end of paragraph

(36) ;

(2) by striking out the period at the end of paragraph (37) and inserting in lieu thereof “; and”; and

(3) by inserting immediately after paragraph (37) the following new paragraph:

“(38) provide that no expenditure may be made under the plan with respect to care or services provided to an individual under the plan to the extent that any agency, organization, or other person (other than a member of the individual’s family) would have been obligated by a State law or contract to provide such care or services but for a provision of the State law or contract which limits or excludes such obligation because the individual is eligible for or receives care or services under the plan.”.

(b) The amendments made by subsection (a) shall become effective January 1, 1978.



3 8095 00006484 6

95TH CONGRESS
1ST Session

H. R. 3

A BILL

To strengthen the capability of the Government to detect, prosecute, and punish fraudulent activities under the medicare and medicaid programs, and for other purposes.

By Mr. ROSTENKOWSKI and Mr. ROGERS

JANUARY 4, 1977

Referred jointly to the Committees on Ways and Means
and Interstate and Foreign Commerce